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October 30, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

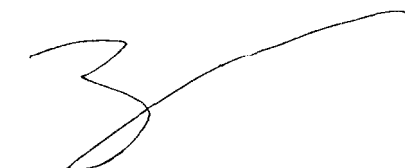
Dear Mr. Caton:

Re: Non-Accounting Safeguards, CC Docket No. 96-149;
Electronic Publishing, CC Docket No. 96-152

Yesterday, Pat Mahoney, Senior Counsel, Pacific Telesis Legal Group, Keith J. Epstein, Vice President, Legal and External Affairs, Pacific Telesis Internet Services, Bruce A. Ramsey, Vice President & General Counsel, External Affairs, Pacific Telesis Enhanced Services, Michael J. Yourshaw of Wiley, Rein & Fielding, and I met with A. Richard Metzger, Jr., Deputy Bureau Chief, Melissa W. Newman, Counsel to Bureau Chief, and Michelle Carey of the Common Carrier Bureau, to discuss issues summarized in the attachment, and reflected, with respect to telemessaging, in our comments in CC Docket No. 96-149. We are submitting two copies of this notice, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,



cc: Michelle Carey
Richard Metzger
Melissa Newman

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CC Docket No. 96-152 Ex Parte

- Activities not subject to separation
- Teaming and business arrangements
- Separation requirements

Intent of Congress in Passing the Telecommunications Act of 1996

*“... to provide for a **pro-competitive, de-regulatory** national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”*

Exceptions to Section 274

Electronic Publishing Services

Requirements

- Gateways, including introductory information content, and navigational systems, are not electronic publishing
- Electronic publishing services not disseminated by means of the BOC's basic telephone service are not subject to section 274
- Electronic publishing services subject to section 274 necessarily involve BOC control of, or financial interest in, information content
 - Services without such characteristics are not electronic publishing and are not covered by section 274

Section 274(c)(1)—Joint Marketing

- Section 274(c)(1) only restricts BOC activities
- The separated affiliate may promote, market, sell, or advertise the BOC's services

Teaming or Business Arrangements

- These include any lawful arrangements that do not involve BOC “ownership” of the arrangement
 - Ownership is defined in section 274(i)(8)
 - 10% equity
 - 10% share of gross revenues
- The BOC may have a teaming or business arrangement with its separated affiliate
- Congress wanted to encourage joint activities between BOCs and others to promote the availability of electronic publishing

Benefits of Teaming Arrangements

- Alternative distribution channel to increase reach and reduce sales and marketing costs for BOC and for electronic publisher
- Improve performance of subscribers' service
- Enhance value of services to subscriber
- One-stop shopping

“Operated Independently” Requirements of Section 274(b)

- Books, records, and accounts
- Personnel*
- Credit
- Arm’s length transactions
- Property*
- Asset transfers
- Name, trademarks, service marks
- Hiring and training*
- Purchasing, installation, or maintenance of equipment*
- Research and development*

** Not applicable to electronic publishing joint ventures*

The Act Permits Shared Services

- The “operated independently” and separate personnel requirements are not a springboard to additional restrictions
- A meaning beyond that found in the existing safeguards, and as explicitly stated in section 274(b), is not necessary to address cross-subsidy and discrimination concerns
- The holding company or another affiliate may provide administrative and other services to the BOC and the separated affiliate
- Nothing precludes the BOC and the separated affiliate from obtaining property or services from the same third party

Research and Development

- A BOC may share R&D with a section 274 separated affiliate as long as the R&D was not performed specifically “on behalf of” the affiliate
- It is sufficient if the BOC performed the R&D for a purpose independent of the affiliate
 - For example, the BOC might engage in R&D to improve access to communications services by persons with disabilities. It could later share the results with the separated affiliate.

Other Activities *Not* Subject to Structural Separation

- Electronic publishing is not subject to section 272
- Video services may be provided by any company, including the electronic publishing affiliate

SUMMARY

- Only specific activities are subject to section 274
- The joint marketing provisions should be interpreted flexibly
- The Commission should not add to the structural separation requirements specified in the Act for those activities that are subject to section 274